

00602

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-185239

DATE: OCT 8 1975

MATTER OF: District of Columbia - Settlement of Equal Employment
Opportunity Complaints under the Back Pay Act

DIGEST: The Mayor of the District of Columbia asks whether the Back Pay Act, 5 U.S.C. § 5596, provides authority to informally settle Equal Employment Opportunity complaints and award backpay to complainants without a finding of discrimination. Although a specific finding of discrimination need not be made, there must be a finding of an unjustified or unwarranted personnel action that results in the reduction or withdrawal of pay, allowances, or differentials of an employee in order to satisfy the requirements of the Back Pay Act.

This action involves a request dated October 28, 1975, by the Honorable Walter E. Washington, Mayor of the District of Columbia, for a decision as to whether the District of Columbia government, under authority of the Back Pay Act of 1966, 5 U.S.C. § 5596 (1970), may pay an amount agreed upon in settlement of an equal employment opportunity complaint, notwithstanding the fact that no finding of discrimination has been made. Enclosed with this request are two settlement agreements for our review, which are: (1) In the matter of Richard Williamson and Department of Environmental Services (Docket No. 1646-D.C.), hereinafter referred to as the Williamson complaint; and, (2) In the matter of Brenda C. Barnett and Department of Environmental Services (Docket No. 5-DC-077), hereinafter referred to as the Barnett complaint.

The Williamson complaint settlement provides among other things for the reinstatement of the employee in his former WG-4, Water Pollution Plant Control Operator (trainee) position as of January 22, 1975, and backpay for an approximately 2-year period of separation prior to that date.

The Barnett complaint settlement provides among other things for promotion of the employee to GS-6, step 6, on May 25, 1975, retroactively effective as of June 24, 1974, with backpay for the retroactive period.

At the outset, it should be noted that these employees do not come within the purview of the Federal Equal Employment Opportunities Program set forth in 42 U.S.C. § 2000a-16 (Supp. II, 1972) and Civil Service Commission implementing regulations contained in 5 C.F.R. Part 713, inasmuch as the Department of Environmental Services, their employer, does not have positions within the competitive service and therefore is specifically excluded from coverage by the aforementioned statute. Accordingly, the informal complaint adjustment provisions contained in 5 C.F.R. § 713.217 are inapposite to the complaints here involved.

For this reason, the District of Columbia government requests a ruling from this Office as to whether informal settlements of Equal Opportunity Employment complaints may be made under the provisions of the Back Pay Act, 5 U.S.C. § 5596, without a finding of discrimination. The government of the District of Columbia is expressly included within the coverage of section 5596 of title 5, United States Code. Subsection (b) of section 5596 provides, for the payment of retroactive compensation to "[A]n employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action that has resulted in the withdrawal or reduction of all or a part of the pay, allowances, or differentials of the employee * * *." (Emphasis supplied.)

The above-quoted provision explicitly requires a finding by an appropriate authority, as defined in the Civil Service Commission's implementing regulations, 5 C.F.R. § 550.803(c), that an employee has undergone an improper or erroneous personnel action that has caused him to lose pay, allowances, or differentials. 54 Comp. Gen. 760, 762 (1975); B-180010.05, January 2, 1976. The improper personnel action may be any action by an authorized official of an agency which results in the withdrawal or reduction of all or any part of the pay, allowances, or differentials of an employee. See 5 C.F.R. § 550.803. While in the present case it would not be necessary to make a specific finding of discrimination, a finding of an improper or erroneous personnel action that satisfies the aforementioned criteria is required by the Back Pay Act and the regulations thereunder.

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Absent a finding by an appropriate authority of an unjustified or unwarranted personnel action, the Back Pay Act, 5 U.S.C. § 5596, does not provide authority to implement the backpay awards of the Williamson and Barnett complaint settlements.

R.F.KELLER
Deputy, Comptroller General
of the United States